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3. Intoxicating Liquors (§ 224*)—Criminal Prosecution—Burden of Proof.—In prosecution for violation of Prohibition Act, where state merely established prima facie case by proof of liquor in defendant's possession, raising presumption of guilt, under section 65, defendant's evidence, tending to show that such liquor was not for purpose of sale, threw burden of proof upon state to establish defendant's guilt beyond reasonable doubt.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 548.]

4. Criminal Law (§ 823 (9)*)—Instruction—Correction.—In prosecution for violation of Prohibition Act, where state's evidence merely established prima facie case, under section 65, raising presumption that specified liquor in specified amounts found in defendant's possession is for purpose of sale, instruction placing entire burden upon defendant to show his innocence, where the presumption under such statute was overcome by defendant's testimony, was not cured by a subsequent instruction to acquit defendant if state failed to prove him guilty beyond reasonable doubt.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

5. Witnesses (§ 382*)—Impeachment—Evidence.—In prosecution for violation of prohibition act impeaching testimony of defendant's statement that he had given away some of the liquor found on his premises, where such alleged statement was not shown to have been made by defendant when examined as a witness in his own behalf, was not admissible under Code 1904, § 3901.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 966.]

Error to Circuit Court, Lunenburg County.

Charlie Neal was convicted of violating the Prohibition Act, and he brings error. Reversed and remanded.

Geo. E. Allen, of Victoria, for plaintiff in error.

Attorney General Jno. R. Saunders, for the Commonwealth.

BYRD *v.* COMMONWEALTH.

March 13, 1919.

[98 S. E. 632.]

1. Libel and Slander (§ 144*)—Abusing Female Relations—Presence of Third Person.—The offense denounced by Code Supp. 1910, § 3780a, is complete whenever insulting language is spoken to or about another, or about his female relations, in his presence and under circumstances reasonably calculated to provoke a breach of the peace, regardless of presence or absence of third person.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 267.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Statutes (§ 211*)—Construction—Reference to Title.—The title of an act properly may be referred to in determining its meaning.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 761.]

3. Criminal Law (§ 218 (5)*)—Slander—Sufficiency of Warrant.—Warrant charging, as amended, that defendant unlawfully slandered and abused another's wife by using vulgar and obscene language "to and about" her in the presence of her husband, etc., held sufficient to charge substantially that defendant had used abusive language about the wife in the presence of her husband under circumstances reasonably calculated to provoke a breach of the peace.

4. Libel and Slander (§ 149*)—Unlawful Abuse of Wife of Another—Truth as Defense.—Evidence that the offensive words spoken were true is not admissible in bar of a prosecution for a violation of Code Supp. 1910, § 3780a, for having unlawfully slandered and abused another's wife in the presence of her husband under circumstances reasonably calculated to produce a breach of the peace, but was admissible in mitigation of punishment.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 277.]

5. Criminal Law (§ 695 (2)*)—General Objection to Evidence—Admissibility for Some Purposes.—Where evidence was admissible for some, though not all, purposes, general objection to it should have been overruled.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560, 594.]

6. Criminal Law (§ 1170 (5)*)—Prejudicial Error—Exclusion of Evidence.—Where defendant was fined in a materially larger amount than the minimum fixed by Code Supp. 1910, § 3780a, for having unlawfully slandered and abused another's wife in her husband's presence, error in excluding in mitigation of punishment evidence of truth of defamatory words was not harmless.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 583.]

7. Criminal Law (§ 935 (2)*)—New Trial—Venue—Failure of Proof.—Commonwealth was bound to establish venue in prosecution for having unlawfully slandered and abused another's wife in presence of her husband, in view of Code Supp. 1910, § 3780a, and, regardless of instructions, if there was no proof at all as to where offense was committed, verdict of guilty should have been set aside, and new trial awarded, particularly where defendant raised point of venue, and relied on it before case went to jury.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 432.]

8. Criminal Law (§ 1144 (6, 14)*)—Appeal—Presumptions—Favoring Court Below—Instructions—Evidence.—In absence of bill of exceptions showing all instructions given or all evidence introduced, Supreme Court will presume that rejected instruction was covered

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by some other one given, and that there was evidence not certified as part of record which showed offense was committed within jurisdiction of trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 615; 5 Va.-W. Va. Enc. Dig. 379.]

9. Criminal Law (§§ 1121 (4), 1122 (1)*)—Bill of Exceptions—Construction.—Where trial court, to bill of exceptions, certified that following evidence was introduced by commonwealth to maintain issue, and then set out evidence, which, in light of other bills, could not have been intended as anything but a certificate of all evidence, and such matter was followed by statement that court instructed as follows, setting out a single instruction purporting to apply to evidence as whole, bill of exceptions must be taken as embracing all evidence and all instructions.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 380.]

Error to Corporation Court of Hopewell.

R. J. Byrd was convicted of unlawfully slandering and abusing another's wife by using vulgar and obscene language to and about her in the presence of such other, and he brings error. Judgment reversed, and cause remanded for new trial.

W. L. Devany, Jr., of Hopewell, for plaintiff in error.
Ino. R. Saunders, Atty. Gen., for the Commonwealth.

MOORE v. NORFOLK & W. RY. CO.

March 13, 1919.

[98 S. E. 635.]

1. Venue (§ 32 (1)*)—Objection to Jurisdiction—Time of Making.—Where defendant was served with process according to Code 1904, §§ 3225, 3227, and permitted the action to go to judgment by default, a subsequent objection to venue of the action came in the wrong form and too late, since section 3260 expressly provides that such objection must be taken by plea in abatement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 12, 22.]

2. Venue (§§ 21, 32 (1)*)—Jurisdiction—Statute—Waiver.—Code 1904, §§ 3214, 3215, providing actions may be brought in any county or corporation wherein the cause of action arose, where defendants reside, or where defendant corporation's principal officer or officers reside, do not confer jurisdiction upon any courts, but confer upon defendant a privilege as to venue of trial which may be waived by failure to plead in abatement as provided by section 3260.

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